

Section 3

Frequently Asked Questions; Renumbering; Supplementals

These frequently asked questions were compiled from the Rule-writers' Consortium and the Secretary of State's Office. For more detailed information, see Section 2 of this manual.

1. I'm a new rulewriter. Where do I start?

Read this manual carefully and then give the editors a call with your questions. **No question is unimportant.** Remember to check that you have updated copies of the APA and the rules for the Secretary of State and G.R.R.C.

2. We're a new agency. How do we get a Chapter number?

Contact the Office, and we will assign a Title and Chapter number for your rules.

3. I submitted a Docket Opening, but now I want to add some Sections. Can I pull the Docket and start over?

No. Once a Docket Opening has been date stamped and logged in, it cannot be pulled. To add Sections to an open Docket, either file another Docket Opening with the additional Sections, or include, under the Sections Affected part of the Docket, the phrase, "Additional Sections may be added, deleted, or modified as necessary." This phrase gives you room to add Sections in the future.

4. Can I split one Docket into two Proposed (or Final) packages, or take two Dockets and combine them into one Proposed (or Final)?

Yes, but you should explain that you did so in the Preamble so the history of the rulemaking can be traced more easily. You can also combine multiple Proposed packages and combine them into one Final.

5. What exactly has to be on the disk I submit with the package?

Only the Notice (Preamble and text of the rule). The Agency Receipt, Agency Certificate, and EIS do not have to be on the disk you submit because they are not published in the *Register*.

6. Do I always have to submit a disk?

The Office prefers that you always send a disk with materials that will be published in the *Register*. Submitting

both a disk and hard copy better ensures that your rules will be published correctly and on schedule.

At the time of this writing, the Office has submitted a proposed rule for R1-1-104 that requires an agency to submit its rulemaking package or other notice in paper copy and electronic medium. All electronic media submissions shall be compatible with the Office's computer system and software. An agency shall not save electronic format rules as templates. Contact the Office for further help.

7. Can I submit a Docket and Proposed on the same day?

Yes. Usually they will be published in the same issue of the *Register*. However, it was probably the intent of the legislature when it wrote the APA that a docket be open before a proposed rule is filed. This provides notice to the public of future rulemaking.

8. Why wasn't my notice published in this week's *Register*?

There are several explanations. First, notices are not published the week they are filed: they are usually published three weeks from the Friday of the week they are filed. Second, if an agency files two like notices for the same Chapter in the same week, the Office may hold one notice for a week. The Office will contact you to determine which notice to hold. Third, you may not have submitted a disk with your notice, which can delay publishing. Fourth, your notice may be particularly large or complicated, which can delay publishing.

9. What parts of my notice will the *Register* editor fill in for me?

The *Register* editor will fill in the items in the Preamble listing *Register* citations and the effective date of the rules if you cannot answer those questions at the time you file your notice. Sometimes an agency will file a proposed rule package before the docket opening has been published, and agencies usually cannot answer item #3 of the preamble in a final rule package because they do not know when G.R.R.C. or the A.G.'s Office will file the package with the Office and therefore when it will be published in the *Register*.

10. Who can sign an agency certificate?

The certificate must contain the signature, in ink, of the agency chief executive officer or the officer's designee. Certificates that contain one person's signature and another person's typed name will not be accepted.

11. How many copies of my materials should I bring to the Office?

An agency submitting materials for filing or publication in the *Register* or *Code* must send an original and two copies. An **Agency Certificate** and two copies of the **Agency Receipt** must accompany the original of the rulemaking package (R1-1-105 and R1-1-106). An Agency Certificate must accompany each copy of the rulemaking package.

12. Can I correct an error in a rule package I submitted, either before or after publication in the *Register* or *Code*?

Sometimes. Contact the Office about the error, and we will advise you on your options. Depending on the error, you may be required to do a variety of things to correct it. See the **correction of errors** entry in Section 2 of this manual.

13. Can I get a courtesy review of my rule before it is published in the *Register*?

Sometimes. Depending on the workload in the Office, the editors may be able to provide a courtesy review of your rule package. But if you are especially concerned about your rule package, or if it is particularly complex, the Office will probably spend additional time on it. It benefits everyone if you are in contact with the Office during the time you are doing the rulemaking.

14. How long will it take for my rule to get published in the *Register* and *Code*?

Usually the turnaround time for *Register* publication is three weeks from the Friday of the week you submit it. (Refer to the calendar in the back of the *Register*.) *Code* supplements are published approximately one month after the close of the quarter.

15. When is a final rule effective?

Laws 2002, Ch. 334, §§ 7 and 8 (SB 1339) changed the effective date of final rules. The effective date is now 60 days after the date of filing in the Office, unless G.R.R.C. or

the Attorney General approves an effective date earlier or later than 60 days after the date of filing in the Office.

16. There was an error in my rule in the *Register*. Can it be corrected before appearing in the *Code*?

If the error is minor, it will be corrected in the *Code*. If it is substantive, you will have to do additional rulemaking to make the correction. Contact the Office regarding corrections.

17. My agency is exempt from the APA. Do I still have to file rules with the Office?

Yes. Under A.R.S. §§ 41-1005 and 41-1012, your agency must file a Notice of Exempt Rulemaking and follow the Secretary of State's rules for filing notices. Some agencies are only partially exempt from the APA, and others are exempt but choose to follow the normal rulemaking process (for example, submitting proposed rules and holding a hearing).

18. What changes have to be in the Notice of Supplemental Proposed Rulemaking?

See the entry for **supplemental proposed rulemaking** in Section 2 of this manual.

19. Can I repeal a rule by letting it expire?

Yes, under the circumstances described in A.R.S. § 41-1056(E). The Historical Note, however, will indicate that the rule expired, not that it has been repealed.

20. Can I insert a Section between two already existing Sections?

Yes. You must request permission from the Office to insert a new Section between two existing, consecutively numbered Sections. The new Section uses the number of the preceding Section followed by a decimal point and a two-digit number.

21. Can I get a free copy of my agency's rules?

Under R1-1-114, each agency is entitled to one free paper copy of its rules. The Office will send the rules to the agency's chief executive officer unless the Office receives other instructions from the agency.

Renumbering Examples

The following excerpts from the *Register* contain renumbering that is more complicated than the examples shown in the **renumbering Sections** entry in Section 2 of this manual. When renumbering in a rule package, be sure that the rulemaking action in item #1 of the Preamble matches the striking and underlining in the table of contents and the text of the rules. For more details about renumbering, see the **renumbering Sections** entry in Section 2 of this manual.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES COMMUNICABLE DISEASES

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R9-6-101	Amend
R9-6-102	Amend
R9-6-103	Amend
R9-6-104	Repeal
R9-6-308	Amend
R9-6-309	Amend
R9-6-323	Amend
R9-6-330	Amend
R9-6-331	Amend
R9-6-360	Amend
Article 4	Amend
R9-6-401	Renumber
R9-6-401	New Section
R9-6-402	Renumber
R9-6-402	Amend
R9-6-403	Renumber
R9-6-403	Amend
R9-6-404	Renumber
R9-6-404	Amend
R9-6-405	Renumber
R9-6-405	Amend
R9-6-406	Renumber
R9-6-406	Amend
R9-6-407	Repeal
R9-6-407	Renumber
R9-6-407	Amend
R9-6-408	Renumber
R9-6-408	New Section
R9-6-409	Renumber
R9-6-409	Amend
Exhibit A	Renumber
Exhibit B	Renumber
R9-6-410	Renumber
Article 9	New Article
R9-6-901	New Section
R9-6-902	Renumber
R9-6-902	Amend
Exhibit A	Renumber
Exhibit A	Amend
Exhibit B	Renumber
Exhibit B	Amend

R9-6-903
R9-6-903

Renumber
Amend

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES**

ARTICLE 1. DEFINITIONS

Section

- R9-6-101. ~~General Definitions~~
R9-6-102. Communicable Disease Reporting
R9-6-103. Control Measures for Communicable Diseases
R9-6-104. ~~Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS)~~ Repealed

ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE AND PREVENTABLE DISEASES

Section

- R9-6-308. Chancroid (*Haemophilus ducreyi*)
R9-6-309. Chlamydia Infection
R9-6-323. Gonorrhea
R9-6-330. Herpes Genitalis
R9-6-331. Human Immunodeficiency Virus (HIV) Infection and Related Disease
R9-6-360. Syphilis

ARTICLE 4. ~~HUMAN IMMUNODEFICIENCY VIRUS (HIV) / ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS)~~ AIDS DRUG ASSISTANCE PROGRAM (ADAP)

Section

- R9-6-401. Definitions.
~~R9-6-401.~~R9-6-402. Limitations and Termination of Program
~~R9-6-402.~~R9-6-403. Eligibility Requirements
~~R9-6-403.~~R9-6-404. Application Process
~~R9-6-404.~~R9-6-405. Eligibility Determination and Enrollment Process
~~R9-6-405.~~R9-6-406. Period of Eligibility Continuing Enrollment
~~R9-6-407. Appeal~~
~~R9-6-406.~~R9-6-407. Distribution Requirements
R9-6-408. Time-frames
~~R9-6-408.~~R9-6-409. Confidentiality
Exhibit A. ~~Consent for HIV-Related Testing~~ Renumbered
Exhibit B. ~~Consentimiento para la Prueba de VIH~~ Renumbered
R9-6-410. ~~Human Immunodeficiency Virus Testing~~ Renumbered

ARTICLE 9. HIV-RELATED TESTING

Section

- R9-6-901. Definitions
~~R9-6-409.~~R9-6-902. Consent for HIV-related Testing
~~Exhibit A.~~Exhibit A. Consent for HIV Testing
~~Exhibit B.~~Exhibit B. Consentimiento Para la Prueba de VIH
~~R9-6-410.~~R9-6-903. Human Immunodeficiency Virus Court-ordered HIV-related Testing

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER INFRASTRUCTURE FINANCE AUTHORITY

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R18-15-101	Amend
R18-15-103	Amend
R18-15-104	Amend
R18-15-105	Amend
R18-15-106	Amend
R18-15-108	Repeal
R18-15-108	Renumber
R18-15-109	Renumber
R18-15-110	Renumber
R18-15-110	Amend
R18-15-111	Renumber
R18-15-111	Amend
R18-15-112	Renumber
R18-15-112	Amend
R18-15-113	Renumber
R18-15-201	Amend
R18-15-202	Amend
R18-15-203	Amend
R18-15-204	Amend
R18-15-205	Repeal
R18-15-205	Renumber
R18-15-205	Amend
R18-15-206	Renumber
R18-15-206	New Section
R18-15-207	Repeal
R18-15-207	New Section
R18-15-208	Amend
R18-15-301	Amend
R18-15-302	Amend
R18-15-303	Amend
R18-15-304	Amend
R18-15-305	Repeal
R18-15-305	Renumber
R18-15-305	Amend
R18-15-306	Renumber
R18-15-306	New Section
R18-15-307	Repeal
R18-15-307	New Section
R18-15-308	Amend
R18-15-403	Repeal
R18-15-501	Amend
R18-15-502	Amend
R18-15-503	Amend
R18-15-504	Repeal
R18-15-504	Renumber
R18-15-504	Amend
R18-15-505	Renumber
R18-15-505	New Section
R18-15-506	Repeal
R18-15-506	New Section
R18-15-507	Repeal
R18-15-507	New Section
R18-15-508	New Section
R18-15-509	New Section
R18-15-510	New Section

Section 3. Frequently Asked Questions; Renumbering; Supplementals

R18-15-511	New Section
R18-15-601	Amend
R18-15-602	Amend
R18-15-603	Amend
R18-15-701	Amend

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 1. MANAGEMENT

Section

R18-15-101. Definitions
R18-15-103. Legal Capability
R18-15-104. Financial Capability
R18-15-105. Technical Capability
R18-15-106. Managerial and Institutional Capability
~~R18-15-108. Readiness to Proceed~~
~~R18-15-109. R18-15-108. Interest Rate Determinations~~
~~R18-15-110. R18-15-109. Bid Document Review~~
~~R18-15-111. R18-15-110. Disbursements and Repayments~~
~~R18-15-112. R18-15-111. Administration~~
~~R18-15-113. R18-15-112. Disputes~~
R18-15-113. Renumbered

ARTICLE 2. CLEAN WATER REVOLVING FUND

Section

R18-15-201. Types of Financial Assistance Available
R18-15-202. Eligibility Requirements for Financial Assistance
R18-15-203. Clean Water Revolving Fund Intended Use Plan
R18-15-204. Clean Water Revolving Fund Priority List
~~R18-15-205. Clean Water Revolving Fund Priority Classes~~
~~R18-15-206. R18-15-205. Ranking Criteria for the Clean Water Revolving Fund Priority List~~ ~~Ranking Criteria~~
R18-15-206. Fundable Range for Clean Water Revolving Fund Design Financial Assistance
~~R18-15-207. Project Construction Fundable Range for Clean Water Revolving Fund Construction Financial Assistance~~
R18-15-208. Clean Water Revolving Fund Requirements

ARTICLE 3. DRINKING WATER REVOLVING FUND

Section

R18-15-301. Types of Financial Assistance Available
R18-15-302. Eligibility Requirements for Financial Assistance
R18-15-303. Drinking Water Revolving Fund Intended Use Plan
R18-15-304. Drinking Water Revolving Fund Priority List
~~R18-15-305. Drinking Water Revolving Fund Priority Classes~~
~~R18-15-306. R18-15-305. Ranking Criteria for the Drinking Water Revolving Fund Priority List~~ ~~Ranking Criteria~~
R18-15-306. Fundable Range for Drinking Water Revolving Fund Design Financial Assistance
~~R18-15-307. Project Construction Fundable Range for Drinking Water Revolving Fund Construction Financial Assistance~~
R18-15-308. Drinking Water Revolving Fund Requirements

ARTICLE 4. OTHER FINANCIAL ASSISTANCE

Section

R18-15-403. ~~Project Construction~~ Repealed

ARTICLE 5. TECHNICAL ASSISTANCE

Section

R18-15-501. Technical Assistance Intended Use Plan
R18-15-502. Eligibility Requirements for Project Technical Assistance

R18-15-503. Types of Project Technical Assistance Available

~~R18-15-504. Maximum Amount of Project Technical Assistance~~

~~R18-15-505. R18-15-504. Clean Water Project Technical Assistance Priority List~~

~~R18-15-505. Ranking Criteria for Clean Water Project Technical Assistance Priority List~~

~~R18-15-506. Project Technical Assistance Priority Classes Fundable Range for Clean Water Project Technical Assistance Grants~~

~~R18-15-507. Project Technical Assistance Priority Scoring Criteria Fundable Range for Clean Water Project Technical Assistance Loans~~

~~R18-15-508. Drinking Water Project Technical Assistance Priority List~~

~~R18-15-509. Ranking Criteria for Drinking Water Project Technical Assistance Priority List~~

~~R18-15-510. Fundable Range for Drinking Water Project Technical Assistance Grants~~

~~R18-15-511. Fundable Range for Drinking Water Project Technical Assistance Loans~~

ARTICLE 6. HARDSHIP GRANT FUND

Section

R18-15-601. Types of Assistance Available

R18-15-602. Eligibility Requirements for Hardship Grant Financial Assistance

R18-15-603. Hardship Grant Financial Assistance Awards

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Section

R18-15-701. Interest Rate Setting and Forgivable Principal

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

PREAMBLE

<u>1. Section Affected</u>	<u>Rulemaking Action</u>
R9-14-601	Amend
R9-14-602	Amend
R9-14-603	Amend
R9-14-604	Amend
R9-14-605	Renumber
R9-14-605	New Section
R9-14-606	Renumber
R9-14-606	Amend
R9-14-607	Renumber
R9-14-607	Amend
R9-14-608	Renumber
R9-14-608	New Section
R9-14-609	Renumber
R9-14-609	Amend
R9-14-610	Renumber
R9-14-610	Amend
R9-14-611	Renumber
R9-14-611	Amend
R9-14-612	Renumber
R9-14-612	Amend
R9-14-613	Renumber
R9-14-613	Amend
R9-14-614	Renumber
R9-14-614	Amend
R9-14-615	Renumber
R9-14-615	Amend
R9-14-616	Repeal
R9-14-616	Renumber
R9-14-616	Amend
R9-14-617	Renumber
R9-14-617	Amend
R9-14-618	Renumber
R9-14-618	Amend
R9-14-619	Renumber
R9-14-619	Amend
R9-14-620	New Section
Table 1	New Table

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

- R9-14-601. Definitions
R9-14-602. ~~License~~ Applicability
R9-14-603. Initial ~~Licensure~~ License Process
R9-14-604. ~~Licensure~~ Regular License Renewal Process
R9-14-605. Compliance Monitoring
~~R9-14-605.~~ R9-14-606. Provisional ~~License~~ Licensing
~~R9-14-606.~~ R9-14-607. ~~Licensure fees~~ Fees

<u>R9-14-608.</u>	<u>Payment of Fees</u>
R9-14-607.	R9-14-609. Proficiency Evaluation
R9-14-608.	R9-14-610. Approved Methods and References
R9-14-609.	R9-14-611. Drinking Water Sample Matrix <u>Methods</u>
R9-14-610.	R9-14-612. Wastewater Sample Matrix <u>Methods</u>
R9-14-611.	R9-14-613. Solid, Liquid, and Hazardous Waste Sample Matrix <u>Methods</u>
R9-14-612.	R9-14-614. Air Sample Matrix <u>Methods</u>
R9-14-613.	R9-14-615. Quality Assurance
R9-14-616.	Laboratory Safety
R9-14-614.	R9-14-616. Operation
R9-14-615.	R9-14-617. Laboratory Records and Reports
R9-14-617.	R9-14-618. Mobile Laboratories
R9-14-618.	R9-14-619. Out-of-State Environmental Laboratory Licensure <u>Licensing</u>
R9-14-620.	Time-frames
<u>Table 1.</u>	<u>Time-frames (in days)</u>

Guide for Notices of Supplemental Proposed Rulemaking (September 12, 2002)

The APA states that an agency shall not make a rule that is “substantially different” from the proposed rule published in the Notice of Proposed Rulemaking or Notice of Supplemental Proposed Rulemaking. G.R.R.C. shall not approve a final rule that contains a “substantial change” from the proposed rule or supplemental notice.

If there is a substantial change made to a rule after it is proposed, an agency has three options:

1. Do nothing. The docket for the rulemaking will expire one year after the proposed is published if the agency does not submit the final rule to G.R.R.C.

2. File a Notice of Termination of Rulemaking. The agency then has the option of starting the rulemaking over with a new docket and a new proposed.

3. File a Notice of Supplemental Proposed Rulemaking and provide for additional public comment.

Supplemental notices have raised publishing questions because of the SOS instructions on how to prepare them. To answer these questions and promote consistency among rulewriters and the Office, SOS provides this brief guide on the requirements for supplemental notices. **These requirements differ from past instructions on supplementals.**

1. If I need to make changes to my proposed rule, do I have to do a supplemental?

Maybe. If the changes you want to make are not considered “substantial” under A.R.S. § 41-1025, you may simply make the changes in the Notice of Final Rulemaking and explain the changes in item #10 of the Preamble. But if the changes are substantial, a supplemental is necessary to continue the rulemaking process -- unless you terminate the rules and start over.

2. What Sections go in a supplemental?

In the past, SOS advised rulewriters to include only the Sections undergoing change *after* the publication of the proposed rule (or supplemental). SOS now advises that the supplemental include every Section undergoing change. Rather than being considered an addendum to the proposed, the supplemental should be considered a “do-over” -- as if you were resubmitting the original proposed, but now with new changes.

3. What changes to the text do I show?

In the past, SOS advised rulewriters to show *all changes*, interpreted to mean the changes (striking and

underlining) from the proposed rule and the “new” changes that required the supplemental notice -- but only for Sections undergoing change in the supplemental. These two sets of changes were seen to exist essentially as two separate layers. Some text, therefore, might have had both underlining and striking if multiple changes were made to the same words.

SOS now advises that the supplemental simply appear as if it were the original proposed rule package. Include all desired changes from the original Code text (the base text from which all proposed rulemakings start) as if the supplemental were your first version of the proposed rule.

4. How do I distinguish the changes in the proposed from the changes in the supplemental?

There are three ways readers can understand the changes in text:

1. Compare the two (or more) texts from the Registers in which they appeared.

2. Look at item #6 of the Preamble of the supplemental(s) for an explanation of the substantial change that resulted in the supplemental notice.

3. Look at item #10 of the Preamble of the final notice for a description of the changes between the proposed rules, including supplemental notices, and final rules.

The Preamble is therefore very important to the public as the quickest and easiest resource for understanding the agency’s actions.

5. What should be in the Preamble and table of contents?

The Preamble should list all Sections appearing in the text of the supplemental, regardless of whether the Sections appeared in the proposed. The Preamble should list the rulemaking action that is taking place in the supplemental - not the rulemaking action that occurred in the proposed. The table of contents should reflect what is in the text of the rules (what follows the table of contents).

Publishing the supplemental as a “do-over” (that is, including all Sections) may mean republication of Sections that are identical to the proposed. However, showing all

Sections together gives the public a more complete understanding of the agency's intentions and the effects of the rulemaking. It also provides for public comment on the rulemaking as a whole, not just Sections undergoing change in the supplemental.

6. What happens to the rulemaking timetable?

A.R.S. § 41-1021 states that a rulemaking docket expires one year after publication of the proposed rulemaking if the agency does not submit a final rule to G.R.R.C. within that time. The start date of that one-year period is reset upon publication of a supplemental rulemaking.